

JUN 11 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

NAI CHING SAELEE,

Defendant - Appellant.

No. 08-30331

D.C. No. 3:04-CR-00125-RRB

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
Ralph R. Beistline, Chief District Judge, Presiding

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Nai Ching Saelee appeals from the district court's order denying his 18 U.S.C. § 3582(c)(2) motion for a reduction of his sentence. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Saelee contends that Amendment 706 to the United States Sentencing Guidelines, retroactively amending U.S.S.G. § 2D1.1 with respect to offenses involving crack cocaine, authorizes the district court to resentence him. The district court did not err by concluding that it lacked jurisdiction pursuant to section 3582(c)(2) to modify Saelee's sentence, as his sentence was premised upon the career offender provision of U.S.S.G. § 4B1.1. Thus, Saelee's sentence is not based on a sentencing range that has subsequently been lowered by the Sentencing Commission, as required by section 3582(c)(2). *See United States v. Leniear*, 574 F.3d 668, 673 (9th Cir. 2009); *see also United States v. Wesson*, 583 F.3d 728, 731 (9th Cir. 2009).

AFFIRMED.